



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/040

Judgment No.: UNDT/2017/069

Date: 28 August 2017

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CASTELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON RECEIVABILITY**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a Policy and Best Practices Officer at the P-4 level. He is employed with the United Nations Interim Force in Lebanon (UNIFIL) on a continuous appointment.

2. The Applicant filed an application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi on 25 April 2017 contesting the decisions not to pay an education grant and reimbursement for mother tongue tuition expenses in respect of his son (the contested decisions).

3. The Respondent filed a reply to the application on 2 June 2017 in which he asserted, *inter alia*, that the application is not receivable *ratione temporis*.

4. On 14 July 2017, the Tribunal issued Order No. 124 (NBI/2017) wherein the Applicant was ordered to submit a concise response solely on the issue of receivability.

5. The Applicant filed the said reply on 20 July 2017.

6. Pursuant to art. 16.1 of the UNDT Rules of Procedure, the Dispute Tribunal has discretionary authority as to whether to hold an oral hearing. Additionally, art. 19 of the Rules of Procedure provides that the Tribunal may at any time issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

7. In the present matter, the Tribunal has concluded that the issues before it can be determined based on the parties' pleadings and supporting documentation. Hence, an oral hearing is not necessary.

Relevant facts

8. The Applicant serves on a continuous appointment as a Policy and Best Practices Officer with UNIFIL at the P-4 level in Naqoura, Lebanon. He has two dependent children, a daughter born in August 2007 and a son born in August 2011.

9. During the 2015-2016 school year, the Applicant's daughter who was eight years old and his son who was then four years old both attended the same school in Beirut.

10. By email dated 23 June 2016, the Applicant submitted to the UNIFIL Human Resources Management Section (HRMS) an education grant claim in respect of both his children.

11. On 28 June 2016, UNIFIL HRMS informed the Applicant that the claim in respect of his son was denied since the child was below the age of five during the 2015-2016 school year. In the same communication, UNIFIL HRMS informed the Applicant that claims for children younger than five are only accepted where the location mandates school attendance at an earlier age.

12. On 29 June 2016, the Applicant sent UNIFIL HRMS an unofficial translation of a Lebanese government Decree, Decree 5046. The Decree stated the commencement of kindergarten level education can be three years, but it did not mention a mandatory commencement age of enrollment.

13. On 17 August 2016, the Applicant requested reimbursement of mother tongue tuition fees for both his children.

14. On 26 August 2016, UNIFIL HRMS informed the Applicant that the claim for an education grant in respect of his son was denied. The principal reason adduced was that the claim did not fall within the exception for a lower enrollment age and that the age for compulsory school attendance in Lebanon was six years of age.

15. On 27 September 2016, HRMS denied the Applicant's request for reimbursement for mother tongue tuition fees in respect of his son for the 2015-2016 school year. The principal reason provided was that this expense was a component of the education grant to which the Applicant was not entitled due to his son's age.

16. On 17 October 2016, the Applicant requested management evaluation of the contested decisions.

17. On 26 October 2016, UNIFIL sent a *note verbale* to the Lebanese Ministry of Foreign Affairs and Emigrants seeking clarification concerning the mandatory age of formal education as well as the start and end of the Lebanese school year.

18. On 19 December 2016, the Lebanese Ministry of Foreign Affairs and Emigrants responded with a letter from the Ministry of Education and Higher Education stating the compulsory school start age was six years of age and the school year in Lebanon starts at the beginning of the month of September and ends in the last week of the month of June.

19. On 2 February 2017, the Applicant received the management evaluation outcome upholding the contested decisions.

Receivability

Respondent's submissions

20. The Respondent submits that the application is not receivable because the Applicant failed to seek timely management evaluation of the decision dated 28 June 2016. The Applicant ought to have sought management evaluation by 27 August 2016 but instead made the request on 17 October 2016. It is the Respondent's case that the communication dated 26 August 2016 was in response to the Applicant's request for reconsideration. Therefore, it did not reset the time limit for management evaluation.

Applicant's submissions

21. The Applicant's submissions on receivability are summarized below.

a. The Respondent's email dated 28 June 2016 did not definitively constitute an administrative decision. It was merely interlocutory and informed a much broader correspondence between UNIFIL HRMS and the Applicant.

b. The email dated 29 June 2016 conveyed the ambiguous position of UNIFIL HRMS on the matter.

c. The Respondent's email of 30 June 2016 sought information from the Applicant to corroborate the claims he made on 29 June 2016 regarding the issue of minimum age for formal education in Lebanon.

d. The *note verbale* dated 26 October 2016, from the United Nations Department of Management to the Lebanese Ministry of Foreign Affairs and Emigrants, shows that the Respondent was still in the process of seeking information that would assist him in making an informed administrative decision on the matter.

e. The conclusion of the Management Evaluation Unit (MEU) dated 2 February 2017 did not state that the Applicant's submission was not receivable.

Considerations

22. Was the contested administrative decision conclusively made and communicated to the Applicant on 28 June 2016 or 26 August 2016?

23. The Statute of the United Nations Dispute Tribunal provides in art. 2:

1. The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of employment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

24. In *Lee* 2014-UNAT-481, the United Nations Appeals Tribunal (the Appeals Tribunal) held that the key characteristic of an administrative decision subject to judicial review is that the decision must "produce direct legal consequences" affecting a staff member's terms and conditions of appointment; the administrative

decision must “have a direct impact on the terms of appointment or contract of employment of the individual staff member”.¹

25. When the Applicant wrote to the Respondent asking for education grant for his two children on 23 June 2016, the response that was sent to him on 28 June 2016 was that his son who was then aged four was not eligible for the grant because he was below the stipulated age of five years. The said response cited also the provisions of ST/AI/2011/4 Amend.1 (Education grant and special education grant for children with a disability) which states in relevant part:

... a lower minimum eligibility age for receipt of the education grant could be accepted if laws at a specific location mandated an earlier start of formal education.

26. By email, dated 29 June 2016, the Applicant sought to counter the position of the Respondent by referring him to a Decree issued by the State of Lebanon and dated 20 September 2010 which extends the start of kindergarten age to three years.

27. The Respondent immediately followed up with a reply to the Applicant stating that he was not able to decide on the issue and sent him another email the very next day 30 June 2016 asking him to send a copy of the State of Lebanon Decree that he had referred to enable a review of his case.

28. On 26 August 2016, the Respondent again wrote to the Applicant and informed him that after consultations and a further review of his claim for education grant in respect of his four-year old son, it was determined that the said claim could not be granted because the mandatory age of schooling in Lebanon was six years.

29. On 27 September 2016, the Respondent wrote to the Applicant and informed him that his request for reimbursement of mother tongue tuition in respect of his son was denied because that expense was a component of the education grant for which the Applicant was not entitled due to his son’s age.

30. On 26 October 2016, the Respondent sent a *note verbale* to the Lebanese Ministry of Foreign Affairs and Emigrants to seek clarification regarding the

¹ Citing the Former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003).

mandatory age of formal education in Lebanon as well as the start and end of the Lebanese school year.

31. On 19 December 2016, the Lebanese Ministry of Foreign Affairs and Emigrants responded with a letter from the Ministry of Education and Higher Education stating the compulsory school start age in Lebanon was six years of age and that the Lebanese school year starts at the beginning of the month of September and ends in the last week of the month of June.

32. The Tribunal has carefully examined all the correspondence between the parties and is not persuaded by the Respondent's argument that the contested administrative decision was conclusively made and communicated to the Applicant on 28 June 2016.

33. The Tribunal is of the view that the correspondence between the parties do not bear out the said argument and finds that the Respondent had not apprised himself of all relevant facts on 28 June 2016 when he rejected the claim for an education grant and reimbursement of mother tongue tuition. In the prevailing circumstances, the Tribunal finds and holds that the contested administrative decision was conclusively made and communicated to the Applicant on 26 August 2016.

34. In view of the Tribunal's findings, the question to be settled is whether the Applicant sought management evaluation in time.

35. Pursuant to art. 8.1(i)(c) of the UNDT Statute and staff rule 11.2(c), for an application to be receivable, the Applicant must first request management evaluation of the contested decision and the said request for management evaluation must be made within specified timelines.

36. In the present case, the contested administrative decision was communicated to the Applicant on 26 August 2016. The Applicant had 60 days thereafter within which to request management evaluation. Thus, the Applicant had until 25 October 2016 to submit his management evaluation request. From the record, the Applicant requested management evaluation on 17 October 2016 and therefore did so on time.

37. MEU wrote to the Applicant on 2 February 2017. Thereafter, the Applicant filed his application with the Tribunal on 25 April 2017. In accordance with art. 8.1(i)(a) of the Statute, the Applicant filed his submissions with the Tribunal within the stipulated guidelines.

Judgment

38. This application is accordingly receivable *ratione materiae* and *ratione temporis*.

(Signed)

Judge Nkemdilim Izuako

Dated this 28th day of August 2017

Entered in the Register on this 28th day of August 2017

(Signed)

Eric Muli
Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi